

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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INDIAN HARBOR INSURANCE COMPANY,	: Case No. 12 CIV 5787 (JGK)
	: ECF Case
	:
Plaintiff,	: INDIAN HARBOR INSURANCE
	: COMPANY’S RESPONSE TO THE
-against-	: CITY OF SAN DIEGO’S
	: STATEMENT OF UNDISPUTED
THE CITY OF SAN DIEGO,	: MATERIAL FACTS IN
	: OPPOSITION TO INDIAN
	: HARBOR’S STATEMENT OF
Defendant.	: UNDISPUTED MATERIAL FACTS
	: IN SUPPORT OF INDIAN
	: HARBOR’S MOTION FOR
	: SUMMARY JUDGMENT
	:
	: Courtroom: 12B
	: Judge: Hon. John G. Koeltl
	:
	: Complaint Filed: July 27, 2012
	: F.A.C. Filed: August 14, 2012
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Pursuant to Rule 56.1 of the Local Civil Rules for the United States District Court for the Southern District of New York, plaintiff Indian Harbor Insurance Company (“Indian Harbor”) respectfully submits the following response to The City of San Diego (“City”)’s statement of material facts in opposition to Indian Harbor’s motion for summary judgment (“Statement”).

<u>City of San Diego’s Undisputed Material Facts</u>	<u>Indian Harbor’s Response to City of San Diego’s Undisputed Material Facts</u>
53. The City of San Diego is a municipality organized and existing under the laws of the State of California.	53. Undisputed for purposes of this motion.
54. The City is a Member of the CSAC Excess Insurance Authority, a risk pool of California public agencies organized	54. Undisputed for purposes of this motion.

under California Government Code
section 6500, *et. seq.*

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| 55. No earlier than July 2009, Indian Harbor Insurance Company (“Indian Harbor”) issued a delivered its “Pollution and Remediation Legal Liability Policy” to the California State Association of Counties CSAC-2, designated as policy no. PEC002076401, for the policy period from July 1, 2009 to July 1, 2012 (the “Policy”). | 55. Undisputed. |
| 56. The premiums due under the Policy are paid by contributions from the CSAC-EIA Members covered under the Policy, including the City. | 56. Undisputed for purposes of this motion. |
| 57. The City of San Diego contributed \$97,591 as a lump sum in July 2009 to CSAC-EIA for payment of the insurance premiums owed Indian Harbor under the Policy. | 57. Undisputed for purposes of this motion. |
| 58. The Grande North Claim was reported to Indian Harbor on March 23, 2012, which is within the Policy Period. | 58. Disputed but inconsequential for purposes of this motion. The Grande North Claim was reported to Indian Harbor on March 26, 2012, not March |

23, 2012.

City of San Diego's Supporting

Evidence: Del Muro Dec., ¶ 7.

Indian Harbor's Supporting Evidence:

Declaration of Max Stern filed in support of motion ("Stern Dec."), Exh. 13;
Declaration of J. Robert McMahon filed in support of motion ("McMahon Dec."), ¶ 6.

59. The Policy contains a self-insured retention ("SIR") of \$500,000.

59. Undisputed.

60. At the time the Grande North Claim was reported to Indian Harbor, the City had only incurred \$347,011.50 in expenses eroding the SIR.

60. Undisputed for purposes of this motion that the City had incurred approximately \$347,011.50 in expenses at the time the Grande North Claim was reported to Indian Harbor. Indian Harbor disputes that those expenses incurred prior to notice and without consent erode the SIR.

City of San Diego's Supporting

Evidence: Del Muro Dec., ¶ 9, Exh. 2.

Indian Harbor's Supporting Evidence:

Indian Harbor Policy (Stern Dec., Exh. 1).

61. The 235 on Market Claim was reported to Indian Harbor on May 24, 2012 which is within the Policy Period.
61. Disputed but inconsequential for purposes of this motion. The 235 On Market Claim was reported to Indian Harbor on May 25, 2012, not May 24, 2012.
- City of San Diego's Supporting Evidence: Del Muro Dec., ¶ 10.
- Indian Harbor's Supporting Evidence: Stern Dec., Exh. 22; McMahon Dec., ¶ 8.
62. At the time the 235 on Market Claim was reported to Indian Harbor, the City had only incurred \$3,883.76 in expenses eroding the SIR.
62. Undisputed for purposes of this motion that the City had incurred approximately \$3,883.76 in expenses at the time the 235 On Market Claim was reported to Indian Harbor. Indian Harbor disputes that those expenses incurred prior to notice and without consent erode the SIR.
- City of San Diego's Supporting Evidence: Del Muro Dec., ¶ 11, Exh. 3.
- Indian Harbor's Supporting Evidence: Indian Harbor Policy (Stern Dec., Exh. 1).
63. The Centex Claim was reported to Indian Harbor on May 24, 2012, which is within the Policy Period.
63. Disputed but inconsequential for purposes of this motion. The Centex Claim was reported to Indian Harbor on

May 25, 2012, not May 24, 2012.

City of San Diego's Supporting

Evidence: Del Muro Dec., ¶ 12.

Indian Harbor's Supporting Evidence:

Stern Dec., Exh. 31; McMahon Dec.,

¶ 10.

64. At the time the Centex Claim was reported to Indian Harbor, the City had only incurred \$2,827.70 in expenses eroding the SIR.

64. Undisputed for purposes of this motion that the City had incurred approximately \$2,827.70 in expenses at the time the Centex Claim was reported to Indian Harbor. Indian Harbor disputes that those expenses incurred prior to notice and without consent erode the SIR.

City of San Diego's Supporting

Evidence: Del Muro Dec., ¶ 13, Exh. 4.

Indian Harbor's Supporting Evidence:

Indian Harbor Policy (Stern Dec., Exh.

1).

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Dated: March 13, 2013

DUANE MORRIS LLP

Attorneys for Plaintiff Indian Harbor Insurance
Company

By: /s/ Max H. Stern
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